

## BUREAU OF LAW

## MEMORANDUM

*Corp. Tax Determinations*  
*A-2*  
*Brooklyn Union Gas Company*

TO: Commissioners Murphy, Palestine and Macduff  
FROM: E. H. Best, Counsel  
SUBJECT: BROOKLYN UNION GAS COMPANY

Proposed Determination  
Section 186, Article 9 of  
the Tax Law

The issue raised herein is whether or not the distribution by the taxpayer of its own common stock on a basis of a transfer of earned surplus to capital is a dividend for franchise tax purposes under section 186 of the Tax Law.

This issue under similar facts was raised in the matter of Rochester Gas and Electrical Corporation presently before you for review. As set forth in my memorandum in that matter dated December 7, 1965, I am of the opinion that the distribution of stock dividends on the basis of a transfer of earned surplus to capital are dividends for franchise tax purposes under section 186 of the Tax Law.

Accordingly, I am in agreement with the proposed determination sustaining the imposition of additional franchise taxes. Kindly return the file after disposition.

/s/

E. H. BEST

Counsel

MS:ca  
Enc.

December 15, 1965

**STATE OF NEW YORK**

**THE STATE TAX COMMISSION**

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**In the Matter of the Application**

**of**

**THE BROOKLYN UNION GAS COMPANY**

**for revision or refund of franchise  
tax under Article 9, Section 186, of  
the Tax Law for the year ended  
October 31, 1961.**

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The Brooklyn Union Gas Company, the taxpayer herein, having filed application for revision or refund of franchise tax under Article 9, Section 186, of the Tax Law, and the facts having been stipulated and agreed by Stipulation of Facts, dated November 4, 1963 and December 8, 1963, executed by Edward H. Best, Counsel, for the New York State Tax Commission, and by Gullen and Ryman, Counsel, for the taxpayer, which Stipulation of Facts is attached hereto and made a part of this determination, and the parties having waived the right to present any further evidence at a hearing under Section 190 of the Tax Law,

Upon all of the stipulated facts and agreements, it is hereby determined:

(A) That the distribution by the taxpayer of its own common stock, on the basis of a transfer of earned surplus to capital during the year ended

October 31, 1961, is a dividend for franchise tax purposes under Section 186 of the Tax Law;

(B) That the tax for the year ended October 31, 1961 is affirmed as assessed;

(C) That the aforesaid tax does not include taxes or other charges which are not legally due.

Dated: Albany, New York

this 28th day of February, 1966.

**THE STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**COMMISSIONER**

/s/

IRA J. PALESTIN

**COMMISSIONER**

/s/

JAMES R. MACDUFF

**COMMISSIONER**